



# WISCONSIN REGULATORY DIGEST

**Volume 12, No. 3**      **A Publication of the MEDICAL EXAMINING BOARD**      **JANUARY, 2001**

## **Law Will Protect Whistleblowers Against Retaliation**

The state will protect health care industry whistleblowers from retaliation by their employers under legislation signed by Gov. Tommy Thompson.

The law also allows health care workers who believe they were disciplined for reporting possible violations to file discrimination complaints with the state.

Thompson said although Wisconsin is already at the forefront of health care, the law will further improve patient care by giving workers the protection they need to speak out when they see problems.

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"This bill strengthens the laws already in place to protect health care users, and it does so with minimal cost," Thompson said.

Employers found to have unfairly disciplined doctors, nurses, pharmacists, social workers and other health care workers face up to \$10,000 in civil fines under the new law.

It also gives health care workers the same right to file discrimination complaints as state employees who feel their supervisors have retaliated against them.

Under 1999 Wisconsin Act 176, retaliation includes being fired or switched to a different shift, reprimanded or threatened.

Gina Dennik-Champion, a spokeswoman for the Wisconsin Nurses Association, said the law also requires health care providers to post information on whistleblower protections and include it in their orientation for new workers.

"A lot of times, they use the chain of command and they keep telling them 'We'll fix it, we'll fix it' and it doesn't get fixed," Dennik-Champion said. "It just kind of goes nowhere. The concern still exists."

Scott Peterson, spokesman for the Wisconsin Health and Hospital Association, said the health care industry sees the law as another step to improve patient care.

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“We’re not going to achieve the high levels of quality that the public is demanding without the help of our employees,” Peterson said.

## 1999 WISCONSIN ACT 176

AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** disciplinary action against an employe of a health care facility or a health care provider who reports a violation of the law or a violation of a clinical or ethical standard by the health care facility or health care provider or by an employe of the health care facility or health care provider and providing a penalty.

*The people of the state of Wisconsin,  
represented in senate and assembly, do enact  
as follows:*

**SECTION 1.** 106.06 (6) of the statutes is created to read:

**106.06 (6)** The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in violation of s. 146.997 (3) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

**SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

**111.322 (2m)** (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

**SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read: 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

**SECTION 4.** 146.997 of the statutes is created to read:

**146.997 Health care worker protection.**  
**(1) DEFINITIONS.** In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist or physical therapist licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.
14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.
15. A partnership of any providers specified under subds. 1. to 14.
16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.
17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985

that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50

19. A rural medical center, as defined in s. 50.50 (11).

20. A home health agency, as defined in s. 50.49 (1)(a).

**(2) REPORTING PROTECTED.** (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or

accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

**(3) DISCIPLINARY ACTION PROHIBITED.** (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2)(d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2)(c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or

provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2)(c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

**(4) ENFORCEMENT.** (a) Subject to par. (b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.06 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32(6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s. 230.45(1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

**(5) CIVIL PENALTY.** Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period

shall be measured by using the dates of the violations that resulted in convictions.

**(6) POSTING OF NOTICE.** Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

**SECTION 5.** 230.45 (1) (L) of the statutes is created to read: 230.45 **(1)** (L) Receive complaints under s. 146.997(4) (a) of disciplinary action taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

**SECTION 6. Nonstatutory provisions.**

**(1) EMPLOYEE NOTIFICATION.** Within 90 days after the effective date of this subsection, each health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, and each health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their rights and remedies under this act.

**SECTION 7. Initial applicability.**

**(1) COLLECTIVE BARGAINING AGREEMENTS.** This act first applies to an employee of a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

**Important Message From the Department of Workforce Development**

Failure to pay court-ordered child support may result in the suspension or non-renewal of professional licenses, including those issued by the Department of Regulation and Licensing and its regulatory boards.

Recently enacted Wisconsin laws (mandated by the federal government) give local child support agencies the ability to request suspension or denial of licenses of people whose names appear on the Child Support Lien Docket and who owe more than \$1,000 or three months' worth of child support.

Past-due child support creates a lien against all of a payer's titled property. The lien is entered into Wisconsin's Child Support Lien Docket when past-due support reaches a specified threshold. In October 2000, the threshold was \$30,000 in past-due support. It is being lowered in stages; the subsequent stage, in January 2001, is \$20,000.

Child support agencies will notify payers at the time their names are added to the Child Support Lien Docket and prior to initiating license suspension action. Satisfaction (payment in full) of the child support lien, or entering into and complying with a plan to pay off the past-due support, will halt license suspension action.

For more information about Child Support Liens and license suspension, please contact your local child support agency.

### **Disciplines**

**DALE M. BUEGEL MD**

**MILWAUKEE WI**                      **LIMITED/COSTS**  
Failed to properly assess a patient's medical condition and document the results. Complete education by 9/7/2001. Complete and comply with conditions and limitations for a period of two years. Effective 9/7/2000. Med 10.02(2)(h) Case #LS9810231MED

**DAN L. HEYERDAHL MD**

**APPLETON WI**  
   **REPRIMAND/LIMITED/COSTS**  
Should have ordered imaging studies sufficient to disclose or rule out the possibility of a fracture of the cervical spine, rather than rely on plain film radiographs of less than optimal quality which predate the development of additional, non-reassuring symptoms. Effective 8/24/2000. Med 10.02(2)(h) Case #LS0008241MED

**DAVID M. ISRAELSTAM MD**

**MADISON WI**                                      **REPRIMAND**

His conduct constitutes violations of professional boundaries for psychiatrists, exposed his patient to an unreasonable risk of harm and falls below the minimum standards of the profession. Ordered to complete a program addressing health care provider/patient relationship boundaries. Effective 9/20/2000. Med 10.02(2)(h) Case #LS0009203MED

**MARK K STEVENS MD**

**LACROSSE WI**

**STAYED SUSPENSION/LIMITED**

Convicted of unauthorized absence; negligently allowed military property (prescriptions) to be wrongfully disposed; had sexual intercourse with a married woman who was a patient of his; fraternization with two different female hospital mates third class; had sexual intercourse with another woman. Was court martialled by the United States Navy. Had disciplinary actions taken against him in California, Minnesota and New York. Effective 9/15/2000. Med 10.02(2)(q) Case #LS9911231MED

**TERRENCE FRANK MD**

**STEVENS POINT WI**

**LIMITED**

Failed to identify the herniated encephalocele on a CT scan and the subsequent decision to perform surgery constituted a violation. Will not engage in any practice of medicine in the future that involves patient contact or direct patient care. Shall surrender his DEA registration. Effective 5/29/2000. Sec. 448.02(3), Stats. Med 10.02(2)(h) Case #LS0004192MED

**SUSAN V KRATZ OT**

**WAUKESHA WI**                      **SUSPENDED/LIMITED**

On or about 11/9/98, was convicted of two counts of misdemeanor Medicaid fraud for billing services that were performed without prior physician authorization. Billings were for continuation of services and were subsequently ratified by the prescribing physicians. Suspended 30 days effective 6/1/2000; followed by 5 years of complete and continuous compliance with imposed limitations. Sec. 448.02(3), Stats. Med 10.02 (2)(m),(r) Case #LS0004194MED

**MARK M BENSON MD**

**WAUWATOSA WI**                      **SUSPENDED/COSTS**

Violated a board order by taking without a prescription a controlled substance for his

personal use. A drug test revealed the presence of barbiturates and hydrocodone. Effective 7/19/2000. Med 10.02(2)(a),(b),(h),(p), Stats. Case #LS0005181MED

JAIRO J MENDIVIL MD

KENOSHA WI REPRIMAND  
Negligent in treatment of patients. Must complete 20 hours of continuing education in the topic of recognition and management of complications of laparoscopic surgery of the abdomen no later than July 1, 2001. Effective 9/20/2000. Sec. 448.02(3)(c), Stats. Case #LS0009204MED

BENJAMIN W LYNE MD

COLORADO SPRINGS CO SURRENDER  
Ordered controlled substances for his personal use without a prescription from another practitioner. Did not keep any records of the receipt or dispensing of the controlled substances. Effective 5/17/2000. Med 10.02(2)(g),(p),(z) Case #LS0005176MED

ROBERT T OBMA MD

FOND DU LAC WI REPRIMAND/LIMITED  
A breast examination of a patient was not performed in a competent, appropriate manner. The patient reported the incident to police and Dr. Obma was charged with disorderly conduct. That charge was dismissed and he was convicted of an ordinance violation. Effective 7/19/2000. Sec. 448.02(3), Stats. Med 10.02(2)(h) Case #LS0007192MED

ALLEN I FRANCO MD

HENDERSON NV SURRENDER  
In November, 1998, the Nevada board issued an order accepting the surrender of his license. He is not currently practicing medicine. Effective 6/22/2000. Med 10.02(2)(q) Case #LS0004101MED

FARHAD H ALRASHEDY MD

REPUBLIC WA SURRENDER  
Disciplined in Washington - became social friends with a patient that became a sexual relationship. Provided the patient with medications prescribed by other physicians when those prescriptions ran out. Disciplined in Michigan based on the disciplinary action in Washington. Effective 9/20/2000. Sec. 448.02(3), Stats. Med 10.02(2)(q) Case #LS0009201MED

FAYE A CURTIS PA

SWARTZ CREEK MI SUSPENDED  
The Michigan department imposed discipline upon her license to practice as a physician's assistant based on impairment due to alcoholism. Has a record of driving while impaired with convictions in Michigan. Her Wisconsin license is suspended for an indefinite period of time. Effective 4/19/2000. Med 10.02(2)(q) Case #LS0004191MED

ALAN E REED JR MD

GRAFTON WI REVOKED/COSTS  
Practiced medicine without being currently registered to practice. Encouraged a chemically dependent patient to illegally obtain controlled substances for his use. Obtained controlled substances for himself. Possessed controlled substances without a valid prescription or order of a practitioner. Effective 8/24/2000. Secs. 448.07(1)(a), 961.41(3g), Stats. Med 10.02(2)(a),(h),(p),(r) Case #LS0006231MED

WILLIAM J DALL MD

DUBUQUE IA SURRENDER  
In Iowa engaged in a consensual but improper relationship with a patient. This disciplinary action is based entirely on the Iowa action. Effective 9/20/2000. Med 10.02(2)(q) Case #LS0009202MED

KENNETH E SPARR MD

TUCSON AZ  
STAYED SUSPENSION/LIMITED/COSTS  
Became addicted to opioids and began to divert patient supplies and to write prescriptions purportedly for patients but actually for self-administration. Practice privileges were revoked by the Air Force in July, 1999, and has not practiced since that date. Effective 6/22/2000. Med 10.02(2)(h),(r),(q),(z) Case #LS0006222MED

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If you do not use the online system, then all requests for verification of licenses/credentials should be submitted in writing. There is no charge for this service. Requests should be sent to the Department address or may be faxed to (608) 261-7083, Attention: Verifications.

**Endorsements**

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September, 1997; June, 1998; December, 1998; June, 1999; September, 1999; July, 2000.

**Wisconsin Statutes and Code**

Copies of the Medical Statutes and Administrative Code can be ordered through the Board Office.

Include your name, address, county and a check payable to the Department of Regulation and

Licensing in the amount of \$5.28. The latest edition is dated October, 2000.

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